

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of date of latest required signature on page 4 ("Effective Date") between

City of West Lafayette, Indiana ("Owner")

and American Structurepoint, Inc. ("Engineer")

Engineer agrees to provide the services described below to Owner for Yeager Road Construction
Inspection – Utility Coordination ("Project").

Description of Engineer's Services: See Appendices A, B, C, and D, attached hereto and made a part hereof.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of ~~4.0%~~ **1.5%** per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional;

or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but

without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

~~E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition). Owner shall require Contractor to purchase and maintain general liability and to cause Engineer and Engineer's Consultants to be listed as additional insureds on a primary and non-contributory basis with respect to such liability purchased and maintained by Contractor for the Project.~~

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater. **Notwithstanding any term or condition herein to the contrary, in the event litigation is commenced to enforce any term or condition herein, the prevailing party shall be entitled to reasonable costs of litigation including a reasonable attorney fee.**

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Owner and the Engineer agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation. The Owner and the Engineer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

J. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Engineer.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

9.01 Payment (Lump Sum Plus Hourly Rates)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. For _____ services, a Lump Sum amount of \$ _____.
2. For _____ services, an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus Engineer's consultants' charges, if any, not to exceed the amount of \$ _____.
3. Engineer's Standard Hourly Rates are attached as **Appendix 1**.
4. The total compensation for reimbursable expenses is estimated to be \$ _____.

B. The Engineer's compensation is conditioned on the time to complete construction not exceeding _____ months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

City of West Lafayette Board of Public Works & Safety

By: _____
Title: John R. Dennis, Mayor

By: _____
Title: Sana G. Booker, Member

By: _____
Title: Bradley W. Marley, Member

By: _____
Title: Jonathan C. Speaker, Member

By: _____
Title: Elizabeth M. Stull, Member

Attest: _____
Title: Judith C. Rhodes, Clerk-Treasurer

Date Signed: _____

Address for giving notices:

David Buck, City Engineer
609 West Navaho Street
West Lafayette, Indiana 47906

Engineer:

American Structurepoint, Inc.

By: 
Title: Clinton L. Sparks, PE, Project Development Director

Date Signed: 8/17/11

Engineer License or Certificate No. PE60018834
State of: Indiana

Address for giving notices:

Willis R. Conner
7260 Shadeland Station
Indianapolis, Indiana 46256

Appendix “A”

Services by Engineer

I. BASIC SERVICES

- A. The Engineer shall provide the field survey required for control of the utility relocations and clearing for the project. Field survey will include staking of the centerline and the right-of-way line for the entire project.
- B. The Engineer shall provide construction inspection services as follows:
 - 1. Through such additional observations of Utility’s work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Utility’s work in progress, supervise, direct, or have control over the Utility’s Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Utility, for security or safety at the Site, for safety precautions and programs incident to the Utility’s work in progress, for any failure of Utility to comply with Laws and Regulations applicable to Utility’s performing and furnishing the Work, or responsibility for Utility’s failure to furnish and perform the Work in accordance with the Contract Documents.
 - 2. The Engineer shall provide construction observation and inspection services for construction of the Project in conformance with accepted standards for this work.
 - 1) **ENGINEERING PERSONNEL**
 - a) For the fulfillment of all services outlined in Section b below, the Engineer will provide one part-time resident project representative, inspectors, and clerical and secretarial personnel as required for a period of time necessary to complete the construction project and final construction report.
 - b) The qualifications and experiences of personnel provided by the Engineer are subject to approval by the Owner, and no personnel will be assigned to the project until the Owner’s approval is obtained.
 - c) The part-time resident project representative will report to the Owner on all matters concerning contract compliance and administration.
 - d) The part-time resident project representative will coordinate project activities with Owner’s project manager.
 - 2) **DESCRIPTION OF SERVICES**

- a) Construction Schedule: Review and monitor the construction schedules prepared by the Utility for contract compliance and provide detailed documentation and recommendations to the Owner concerning the schedule's acceptability
- b) Conferences: Schedule, conduct, notify participants, and provide minutes of pre-construction meetings, partnering meetings, progress meetings, and such other job conferences as required for the timely and acceptable conduct of the job. Attend public information meetings conducted by the Owner.

The Engineer shall be available for conferences as requested by the Owner to review working details of the project. The Owner may review and inspect the activities whenever desired during the life of the Agreement.

- c) Liaison: Serve as the Owner's liaison with the Utility, working principally through the Utility's field superintendent or such other person in authority as designated by the Utility. The full-time resident project representative shall be thoroughly familiar with the plans and specifications applicable to the project to monitor the Utility for compliance with provisions therein. Any deviation observed shall be addressed to the Utility by the resident project representative. Recommendations to obtain compliance also shall be reported to the Owner.
- d) Cooperate with the Owner in dealing with various federal, state, and local agencies having jurisdiction over the project
- e) Obtain from the Utility additional details or information when needed at the job site for proper execution of the work
- f) Review of Work, Inspection, and Tests
 - (1) Conduct on-site inspections of the work in progress for the Owner as a basis for determining that the project is proceeding in accordance with the Contract Documents
 - (2) Accompany visiting inspectors representing local, state, or federal agencies having jurisdiction over the project and report details of such inspections to the Owner
- g) Modification: Consider and evaluate the Utility's suggestions for modifications in drawings and/or specifications and report them with recommendations to the Owner.
- h) Records
 - (1) Prepare and maintain at the job site orderly files of correspondence, reports of job conferences, progress reports, and other project-related documents.
 - (2) Keep a diary or logbook recording hours on the job site, weather conditions, list of visiting officials, decisions, general observations.
 - (3) Maintain for the Owner a record of names, addresses, and telephone numbers of all subcontractors and major material suppliers

- (4) Maintain a set of drawings on which authorized changes are noted and deliver to the Owner upon request, but in any event, at the completion of the project
- i) Reports: Furnish to the Owner at periodic intervals, as required, progress reports of the project, including the Utility's compliance with the approved construction schedule
- j) Work Schedule and Suspension: The Engineer's crew will be required to regulate their workweek to conform to the Utility's hours in accordance with the directions of the Owner. If work on the construction project is suspended and all matters concerning contract compliance and administration are complete, the services of the Engineer may also be suspended without cost to the project.

Appendix “B”

Information and Services to be furnished by Owner

The Owner shall furnish Engineer with the following.

- A. Specifications and standard drawings applicable to the project
- B. All written views received by the Owner pertinent to the location and environmental studies
- C. Available data from the transportation planning process
- D. Plans of existing storm sewer systems within the project limits, if available
- E. Utility plans available to the Owner covering utility facilities governing the location of signals and underground conduits throughout the affected areas
- F. Guarantee of access to enter upon public and private lands, as required for the Engineer to perform services under this Agreement
- G. All legal services as may be required for development of the project
- H. An Owner representative with decision-making authority for inquiries

Appendix “C”

Schedule

All services by the Engineer under this agreement shall be completed and delivered to the Owner for review and approval within the following approximate time periods, exclusive of Owner’s review time. For the purpose of contract control, the services will be submitted by the Engineer to the Owner.

- A. Field Survey complete within five calendar days after receipt of notice to proceed from the Owner.
- B. Construction Inspection Services
 - 1. Commence services upon request of the owner.
 - 2. Oversight of the utilities prior to approval of the INDOT LPA agreement, for an estimated duration of seven weeks at 20 hours per week

Appendix "D"

Compensation

A. Amount of Payment

1. The Engineer's total compensation under this Agreement shall not exceed \$16,000 unless approved in writing by the Owner.
2. The Engineer shall be compensated for the services to be performed under this Agreement on an hourly, not-to-exceed basis, using the rates shown in Paragraph C, below. The total obligation under this portion of the Agreement shall not exceed \$16,000 unless approved in writing by the Owner.
3. The Engineer shall not be paid for any service performed by the Owner or not required to develop this project.

B. Method of Payment

1. The Engineer may submit a maximum of one invoice voucher per calendar month for services covered under this Agreement. The invoice voucher shall be submitted to the Owner. The invoice voucher shall represent the value, to the Owner, of the partially completed services as of the date of the invoice voucher.
2. In the event of a substantial change in the scope, character or complexity of the services on the project, the maximum fee payable and the specified fee shall be adjusted in accordance with Paragraph 3.01 of the general provisions set out in this Agreement.

C. Hourly Rates

<u>Labor Classification</u>	<u>Allowable Hourly Rates</u>	
	<u>Per Year</u>	
	<u>2011/2012</u>	
	<u>Regular</u>	Overtime
Project Manager	\$141.61	N/A
RPR	\$89.26	\$102.60
Inspectors	\$75.58	\$86.87
Registered Land Surveyor	\$110.00	N/A
2-person Survey Crew	\$165.00	N/A

Rates are effective from July 1 through June 30.